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EVETTE LAFAYETTE

v.

DOCKET NO. 42-87-227-2

RANDOLPH COUNTY BOARD OF EDUCATION

DECISION

Grievant, Evette LaFayette, filed a level one grievance in February, 1987 in which she alleged that the Randolph County Board of Education had acted in violation of W.Va. Code, 18A-4-8b(a) when it awarded a teaching position at George Ward Elementary School to another applicant when she was in fact the most qualified.

Following a hearing at level two the grievance was denied by Superintendent Billy Ray Dunn and the matter was appealed to level four in August 1987. The grievant indicated that a decision could be made upon the record, however, the board requested an opportunity to submit additional evidence.

The grievant graduated from the University of Mary Hardin Baylor in 1980 with a Bachelor of Science degree in Education. While a student she worked as a substitute teacher from 1978 to 1980 as is permitted in Texas. Since 1981 she has worked as a substitute teacher in Texas (kindergarten, 5 months) and Massachusetts (1982-1984, kindergarten through sixth grade), taught conversational English while in Korea and has worked as a substitute teacher and counselor in Randolph County since 1985.¹ She presently has a first class temporary teaching certificate for elementary education, grades 1-6, from the West Virginia Department of Education. Her certificate indicates a salary classification for a bachelor's degree plus fifteen hours although transcripts indicate that she has completed eighteen hours at Rivier College and what appears to be six hours at Davis and Elkins College. She is presently pursuing a masters degree in counseling and psychotherapy.

¹The grievant contends that she was informed by Assistant Superintendent Gordon White that if she worked 133 days during a school year she would earn one year of seniority. Therefore she requests that she be granted one year seniority for 1985-86. Mr. White testified the one year was credited for salary purposes only and not seniority. There appears to be no authority to grant grievant's request.

The successful candidate, Mr. Joe Long, graduated from Davis and Elkins College in December 1986, is certified to teach elementary education and had worked as substitute teacher briefly before receiving the position in question.

David Roth, principal at George Ward School, testified that he interviewed all of the applicants by asking each a list of six standard questions dealing with educational philosophy. While he determined the grievant's responses to be average he found Mr. Long to provide more detailed, better developed plans which "...specifically related to some of the things that we had been doing at George Ward." He concluded that Mr. Long had responded in a more complete and detailed fashion and expressed his knowledge well. (T. pp, 25-34)

In reviewing the applicant's personnel files which included the application, certification, recommendations, resume, and miscellaneous information, Principal Roth determined the grievant's background in health and physical education and graduate work in counseling were not specifically related to the position for which she was being considered.² At the con-

²Although not made a part of the record the grievant's Texas certification apparently indicates a specialization in physical education and health. (T. p. 22)

clusion of his review he rated the grievant as his third choice for the position.

Dr. Ann Serafin, Director of Elementary Curriculum Instruction, reviews applicants and interviewed the grievant in August 1986 as part of a general screening and interviewed Mr. Long in January 1987 when the vacancy was announced. Dr. Serafin reviewed the applicants' files and conducted interviews which consisted of sixteen standard questions. She considered factors such as the individual's ability to communicate orally, their demeanor and other general impressions. (T. pp. 47-48) Dr. Serafin concluded that Mr. Long was more qualified than the grievant whom she did not consider to be one of the top candidates in the general pool. (T.p. 55)³

In addition to the foregoing it is appropriate to make the following specific findings and conclusions.

³As a secondary argument the grievant asserts that moving from the substitute list to a regular full-time position is a promotion, that State Board of Education Policy 5300 requires that decisions affecting promotions be made on evaluations and she was not formally evaluated prior to January 1987. While such a change in employment status is an advancement, promotion occurs after one has been hired. Substitutes are not considered regular employees who work part time as evidenced by W.Va. Code, 18-29-2(c) which states that a substitute is considered an employee only on matters related to days worked for an institution or when there is a violation, misapplication or misinterpretation of a statute, policy, rule, regulation or written agreement relating to such substitute. Accordingly, this argument has no merit.

Findings of Fact

1. The grievant possesses West Virginia certification in elementary education grades one through six and has completed post graduate work towards completion of a master's degree in counseling. She has worked as a substitute teacher in Texas and Massachusetts and taught English while in Korea. She has been employed as a substitute teacher and counselor in Randolph County since 1985.

2. Grievant applied for a position as a sixth grade teacher at George Ward Elementary School in January 1987.

3. The position was awarded to another applicant who was determined to be more qualified on the basis of academic records, recommendations and his experience with the vacant position while a student teacher. The successful applicant was a December 1986 graduate and had no post graduate work or teaching experience.

Conclusions of Law

1. W.Va. Code, 18A-4-8b(a) requires that a county board of education shall make decisions affecting promotion and filling of any classroom teacher's position occurring on the basis of qualifications.

2. County boards of education have substantial discretion

in matters relating to the hiring assignment, transfer and promotion of school personnel so long as it is exercised reasonably and not in an arbitrary and capricious manner. Dillon v. Board of Education of the County of Wyoming, 351 S.E. 2d 58 (W. Va. 1986).

3. As all applicants were interviewed and many factors taken into consideration the board acted properly in making its determination even though the grievant had more experience and education. Higgins v. Board of Education of Randolph County, 286 S.E. 2d 682 (W.Va. 1982).

Accordingly, the grievance is **DENIED**.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Randolph County and such appeal must be filed within thirty (30) days of receipt of this decision. (W. Va. Code, 18-29-7). Please advise this office of your intent to do so in order that the record can be prepared and transmitted to the Court.

DATED

January 29, 1988

Sue Keller

SUE KELLER

Hearing Examiner